

1  
2  
3  
4  
5  
6  
7           UNITED STATES DISTRICT COURT  
8           WESTERN DISTRICT OF WASHINGTON  
9           AT SEATTLE

10           UNITED STATES OF AMERICA,

11                 Plaintiff,

12                 v.

13           DARRYL SHEARS,

14                 Defendant.

CASE NO. C10-0561JLR  
CR08-0307JLR

ORDER DENYING  
CERTIFICATE OF  
APPEALABILITY

15           This matter comes before the court for the limited purpose of granting or denying  
16 a certificate of appealability under 28 U.S.C. § 2253(c). Mr. Shears seeks to appeal the  
17 court's July 26, 2010 order denying his 28 U.S.C. § 2255 motion. For the reasons stated  
18 below, the court DENIES Mr. Shears a certificate of appealability.

19           Among substantial changes to federal habeas corpus procedure in the  
20 Antiterrorism and Effective Death Penalty Act of 1996 is a rule that an appellant can  
21 appeal the denial of a 28 U.S.C. § 2255 motion only after obtaining a "certificate of  
22 appealability." 28 U.S.C. § 2253(c). Although the statute is ambiguous, the Ninth

1 Circuit has held that a United States District Court may issue a certificate of  
2 appealability. *United States v. Mahoney*, 433 F.3d 1107, 1111 (9th Cir. 2006) (it is well  
3 settled that district judges as well as circuit judges may issue certificates of appealability  
4 under 28 U.S.C. § 2253(c)(1)); *United States v. Asrar*, 116 F.3d 1268, 1269 (9th Cir.  
5 1997). A court may issue a certificate of appealability only if the “applicant has made a  
6 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The  
7 Supreme Court has elaborated that a petitioner must show that “reasonable jurists could  
8 debate whether . . . the petition should have been resolved in a different manner or that  
9 the issues presented were adequate to deserve encouragement to proceed further.” *Slack*  
10 *v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

11 Here, Mr. Shears has not made a substantial showing of the denial of a  
12 constitutional right. The court therefore declines to grant a certificate of appealability to  
13 Mr. Shears.

14 Dated this 8th day of October, 2010.

15  
16   
17  
18

19  
20 JAMES L. ROBART  
21 United States District Judge  
22